

November 30, 2005

Gene Merriam, Commissioner
Department of Natural Resources
500 Lafayette Road
St. Paul, MN 55155-4047

Re: In the Matter of the Appeal of the ORV Operation Citations
Issued to Kent Devan Knacke and Kenneth Vannett
Citation Nos. 66307 and 66306
OAH Docket Nos. 3-2000-16876-2 and 7-2000-16898-2

Dear Commissioner Merriam:

On November 10, 2005, the prehearing conference was held by telephone on the operation citations listed above. Conservation Officer Colleen Adam, Lieutenant Phil Meier, Kent Knacke, and Kenneth Vannett participated in the hearing. The hearing was tape-recorded. During the conference, the parties agreed that the prehearing conference would serve as the evidentiary record and that my recommendation would be based on the facts as determined on that record.

The relevant facts are largely undisputed. Lieutenant Meier and Officer Adam were traveling southbound (in separate vehicles) on County Road 2 in Nevis, Minnesota on August 26, 2005. County Road 2 is a two-lane road with no ditches paralleling the right-of-way. Both officers observed two all-terrain vehicles (ATVs) being driven northbound on County Road 2 in the traffic lane. The officers perceived the ATVs to be traveling at a "high rate of speed." The two ATVs turned west on County Road 18. The two ATVs remained in the driving lane of County Road 18 until they reached an access point for the Heartland State Trail.¹ The officers stopped the ATVs which were being operated by Kent Knacke and Kenneth Vannett. Lieutenant Meier had his overhead emergency lights on behind Mr. Vannett for almost a quarter-mile and had accelerated his automobile significantly to catch up with Mr. Vannett.

Mr. Knacke and Mr. Vannett had been operating their ATVs along Highway 34, when they turned onto County Road 2 heading northbound. They maneuvered around three parked cars that took them into the travel lane of County Road 2.² County Road 2 leads directly into the central portion of Nevis. The distance between Highway 34 and

¹ The Heartland State Trail is a nonmotorized trail that runs through Nevis and parallels County Road 18. Testimony of Adam.

² Nevis was holding its "Uff Da Day" festival the next day, which may have accounted for the parked cars.

the intersection of County Roads 2 and 18 is, at most, four blocks. They described their driving as being “mostly on the shoulder.”³ Mr. Knacke maintained that he used an arm signal before turning left onto County Road 18.⁴ Both drivers maintained that they were on the gravel shoulder or, when available, a trail alongside County Road 18.

Based on the observed conduct, the officers issued Mr. Knacke citation number 66307 and Mr. Vannett citation number 66306, each for illegal ATV operation on a public roadway. Both citations alleged violations of Minn. Stat. § 84.928, subd. 1, which states:

Subdivision 1. **Operation on roads and rights-of-way.** (a) Unless otherwise allowed in sections [84.92](#) to [84.929](#), a person shall not operate an all-terrain vehicle in this state along or on the roadway, shoulder, or inside bank or slope of a public road right-of-way of a trunk, county state-aid, or county highway other than in the ditch or the outside bank or slope of a trunk, county state-aid, or county highway unless prohibited under paragraph (b).

The only exception to the statute that is applicable to this matter is for obstructions, and that language states:

(b) An all-terrain vehicle may be operated upon a bridge, other than a bridge that is part of the main traveled lanes of an interstate highway, or roadway shoulder or inside bank of a public road right-of-way when required for the purpose of avoiding obstructions to travel when no other method of avoidance is possible; provided the all-terrain vehicle is operated in the extreme right-hand lane, the entrance to the roadway is made within 100 feet of the bridge or obstacle, and the crossing is made without undue delay.⁵

Mr. Knacke also noted that there was a widespread practice of ATV owners driving their ATVs into Nevis. Mr. Knacke and Mr. Vannett also maintained that they were being singled out due to bad conduct by other ATV operators on the Heartland Trail. The conduct which triggered the officers' interest was operating ATVs in the public roadway. There is no evidence to support the contention that other operators were being treated differently in the enforcement of the statutes governing ATV operation. The observed speed of the two ATVs supports the conclusion that they were being operated in the paved traffic lane along both County Roads 2 and 18. Mr.

³ Testimony of Knacke.

⁴ Knacke Appeal Letter.

⁵ Minn. Stat. § 84.928, subd. 1a (b). Crossing a county highway is allowed under Minn. Stat. § 84.928, subd. 1a(a)(1), but the crossing must be done at a 90 degree angle. The ATVs occupied the travel lane along County Road 2 for more than a block prior to turning onto County Road 18.

Knacke's description of his left turn onto County Road 18, maintaining that he used an arm signal, supports the conclusion that he was in the travel lane, not on the shoulder.⁶

Based on all the statements by Lieutenant Meier, Officer Adam, Mr. Knacke, and Mr. Vannett, I find that both Mr. Knacke and Mr. Vannett committed the violations for which they were cited. Therefore, Civil Citation Nos. 66306 and 66307 were properly issued and should be affirmed.

I am closing our file in this matter. The record is enclosed with the exception of the tape of the telephone conference. If you would like a copy of the tape, please contact our office in writing or by telephone at 612-341-7448.

The law requires the final decision in this matter to be made by the Commissioner or his designee. The law⁷ further requires that the Commissioner wait at least five days after receipt of this recommendation before making that final decision and allow Mr. Corne to submit comments to the Commissioner on this recommendation within that five-day period. The Commissioner must send a copy of his final decision to Mr. Corne. If the Commissioner fails to act within 90 days after the record before the Commissioner closes, this recommendation will become the final decision in this matter.⁸

Sincerely,

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge
612-341-7602

cc: Kent Knacke
Kenneth Vannett
Conservation Officer Colleen Adam
Major William Spence, DNR Enforcement

⁶ Knacke Appeal Letter. The 90 degree angle required for crossing county highways renders an arm signal (for a left turn) inappropriate, unless the ATV is already in the travel lane.

⁷ Minn. Stat. § 116.072, subd. 6(e).

⁸ Minn. Stat. § 14.62, subd. 2a.